IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Greg B. Hale, et al. Examiner: Scott Beliveau

Serial No.: 10/692,513 Group Art Unit: 2611

Filed: October 24, 2003 Docket No.: 54317-022501

Title: STREAMING OF DIGITAL DATA TO A PORTABLE DEVICE

Customer No.: 46560

CERTIFICATE OF TRANSMISSION

I hereby certify that this document is being transmitted electronically to the United States Beient and Trademark Office via the EFS Web e-Filing system on September 16, 2006.

SUPPLEMENTAL DECLARATION OF CHRISTOPHER DARROW IN SUPPORT OF THE DECLARATION OF PRIOR INVENTION IN THE UNITED STATES UNDER 37 C.F.R. § 1.131

I, Christopher Darrow, do hereby declare as follows:

- I am a registered United States Patent Attorney at Greenberg Traurig LLP and was responsible for the preparation and filing of United States Provisional Patent Application Number 60/421,255, filed on October 25, 2002, the priority provisional application to the above-identified nonprovisional application.
- One of my direct clients has been Disney Enterprises, Inc., since prior to April 2002.
- All of the documents provided as exhibits to this declaration were created in the United States and/or memorialize events that took place in the United States.
- 4. This declaration is submitted in support of the above-identified Applicants' Declaration under 37 CFR 1.131 filed on September 11, 2006 and my Declaration filed June 5, 2007, establishing conception of Applicants' claimed invention prior to September 3, 2002, and

further establishing diligence toward the constructive reduction to practice of the invention(s) claimed in the above identified application from prior to at least September 3, 2002 to the filing of Applicants' priority provisional application filing date of October 25, 2002.

- 5. On May 10, 2002, I sent a preliminary draft provisional application for this subject matter to Don Wenskay at Disney. During the period from May 10, 2002 to July 17, 2002, I communicated frequently with and worked with Mr. Wenskay and the inventors regarding the drawings and disclosure of the preliminary draft provisional application. On July 17, 2002 I opened matter 054317.022500 specifically for continued preparation of this provisional application. The two month period from the time I sent the preliminary draft application to Mr. Wenskay until I opened a matter for the application is very reasonable and not unusual when communicating with inventors in the initial stage of a disclosure. As is shown in my original Declaration, between sending the preliminary draft application to Mr. Wensky, Mr. Wensky sending the preliminary draft application to the inventors for review, and telephone conversations with the inventors to correctly disclose the invention, two months passed by, which is completely normal.
- 6. From July 17, 2002 to August 8, 2002 I continued to work diligently on the draft provisional application, when time permitted, based on work which had the greatest priority, as is evidenced by my time record provided in Exhibit A. The evidence in Exhibit A shows that from July 1, 2002 to August 8, 2002 my workload included the work of 24 different clients and 68 different matters for those clients. I worked diligently on these 68 matters on a daily basis, taking them in turn based on their priority.
- 7. In general, courts have held that a rule of reason should apply in determining attorney diligence. "We agree ... that a rule of reason should be followed in cases of this kind and that courts should be somewhat liberal in determination of diligence of attorneys and their clerical and stenographic staffs, since the law cannot presume that such people can immediately begin and expeditiously perform their duties as soon as work appears on their desks." <u>D'Amico</u> v. Koike, 347 F.2d 867, 871 (CCPA 1965). "Reasonable diligence does not require a patent

Serial No. 10/692,513 PATENT

Docket No. 54317-022501

attorney engaged in a normal practice to concentrate on any one application to the exclusion of others." Martus & Becker v. Heise, 17 CCPA 1083, 39 F.2d 715, 5 USPQ 74, and Farmer et al. v. Schweyer, 21 CCPA 865, 68 F.2d 961, 20 USPQ 281. It is not unusual for an attorney to intermittently work on matters of moderate priority or even high priority as time is available for the task to be conducted or completed. An attorney may be working diligently on one matter and something of higher priority may come along so that the other matter has to be put aside for some time before it can be worked on again.

- 8. The courts have held that it may not be possible for a patent attorney to begin working on an application at the moment the inventor makes the disclosure, because the attorney may already have a backlog of other cases demanding his attention. The courts have further held that it is not necessary that an inventor or his attorney should drop all other work and concentrate on the particular invention involved. From my experience working as a patent attorney for 37 years, two months has always been a VERY reasonable amount of time to draft a patent application. In Sekine v. Seely, 826 F.2d 1073, (Fed. Cir. 1987), the court held that fifteen weeks is not an excessive amount of time to prepare a patent application for purposes of attorney diligence.
- 9. On August 8, 2002 I assigned one of our patent agents, Margo Maddux, whom I directly supervised, the drafting responsibility for preparation of the revised provisional application. This does not mean that Ms. Maddux could immediately begin working on this matter. On this same day, August 8, 2002, Ms. Maddux had worked on 3 different matters for Disney as is evidenced by Ms. Maddux's time record provided in Exhibit B. During the period between August 8, 2002 and October 25, 2002, Ms. Maddux's workload included the work of 12 different clients and 39 different matters for those clients. Ms. Maddux, under my supervision, and that of others, worked diligently on all these tasks on a daily basis, taking them in turn based on their priority and date of assignment to her docket, with the exception of normal days off, as is evidenced by Margo's time record provided in Exhibit B. There are no facts of record to indicate that Ms. Maddux was deliberately inactive.

PATENT Docket No. 54317-022501

Serial No. 10/692,513

10. Neither I nor Ms. Maddux abandoned this application at any time or lacked attorney diligence in its preparation from just before the critical date of September 3, 2002 to the date of filing of the provisional application.

- 11. On October 9, 2002, Ms. Maddux reviewed the invention disclosure and the draft provisional application. During the two months from August 8, 2002 to October 9, 2002 Ms. Maddux had a backlog of cases/matters that she diligently worked on. As is shown in Exhibit B, Ms. Maddux has a backlog of priority work she focused on and diligently worked on during this period and therefore, was unable to precisely start drafting the revised provisional application until October 9, 2002. This activity is clearly consistent with normal patent practitioner scheduling of work and does not constitute a lack of diligence in preparation.
- 12. As is shown in **Exhibit B**, on October 14, 2002 Ms. Maddux received a new invention disclosure and compared this to the previous disclosure. On October 15 and October 16 of 2002, Ms. Maddux prepared and worked on the draft provisional application. On October 17, 2002 Ms. Maddux transmitted the draft provisional application to the inventors for their review. On October 22, 2002 Ms. Maddux had a telephone conference with one of the inventors. On October 23, 2002 Ms. Maddux revised the draft application according to the inventor's comments. On October 24, 2002 Ms. Maddux sent a second draft application to the inventors and had a telephone conference with the inventors.
- 13. In the normal course of business at a law firm such as Greenberg Traurig, each patent attorney and agent handles a large docket of matters. A normal day, week, or month of an attorney's work includes working on multiple matters all during the same time period. Ms. Maddux clearly worked on at least two matters every day; never concealed, abandoned or deliberately made the application inactive; and, consistent with workload priorities, continued to work diligently on patent matters until her workload allowed for her to continue work on the revised draft patent application, as is shown from the evidence in Exhibit B.
- 14. The integrity of Greenberg Traurig LLP's files and records have been maintained since at least April 19, 2002. These records have not been altered in any way following the date

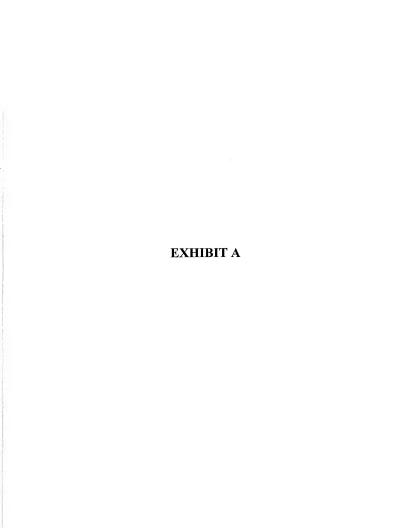
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Docket No. 54317-022501

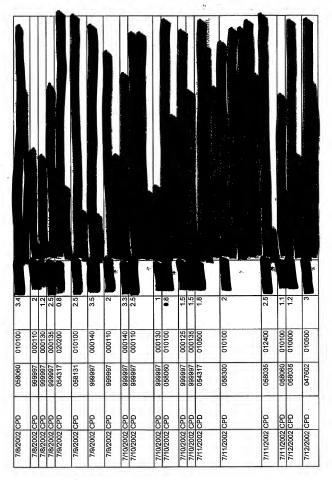
of each entry. Portions of Exhibits A and B have been redacted, however, to remove those items that have no bearing on the present Declaration.

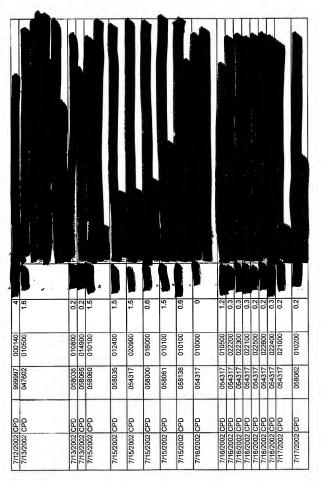
I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that willful false statements or the like may jeopardize the validity of the application or any patent issuing thereon.

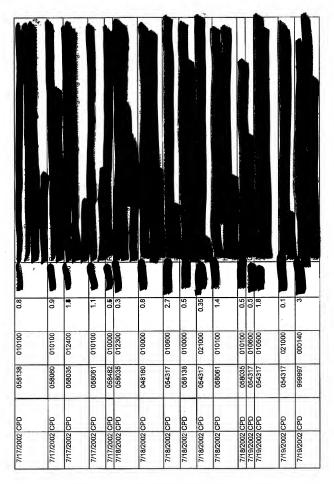
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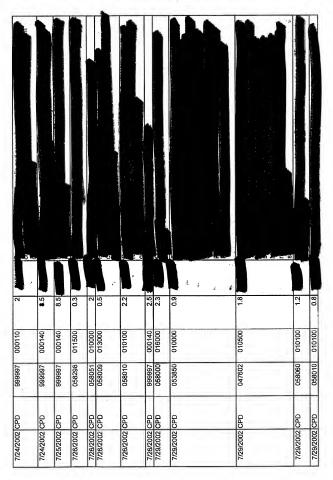
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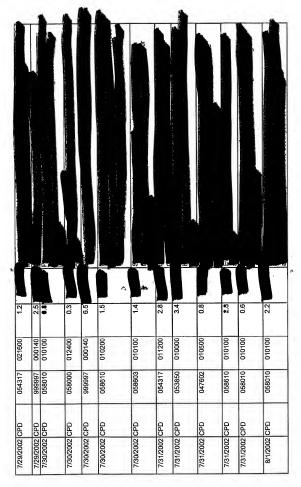




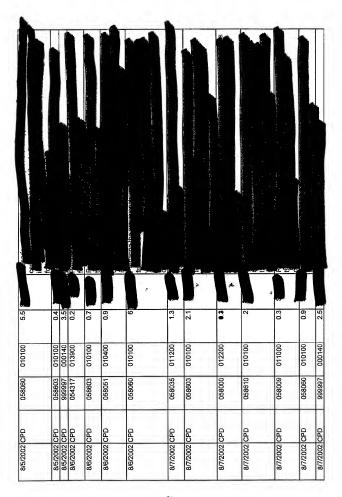


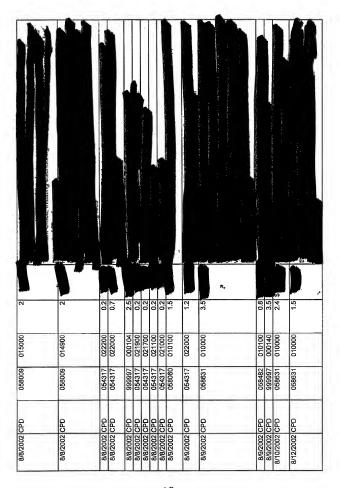
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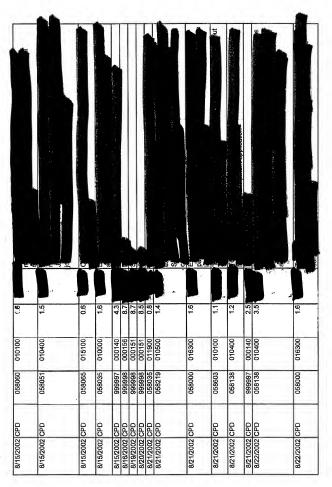


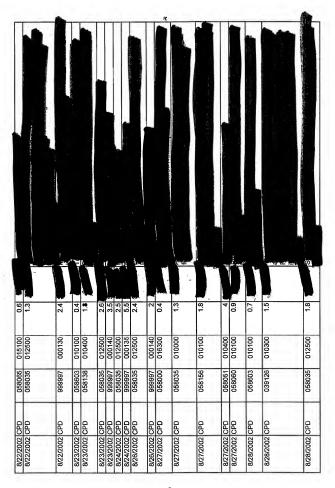
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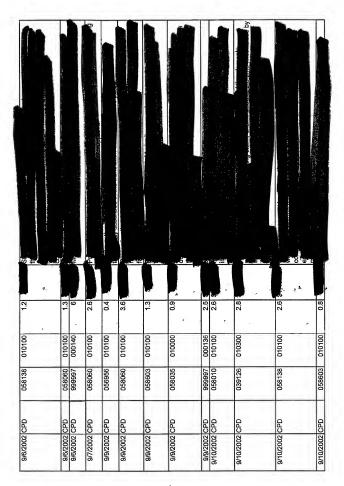
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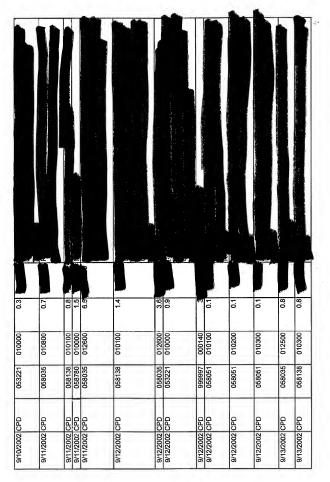




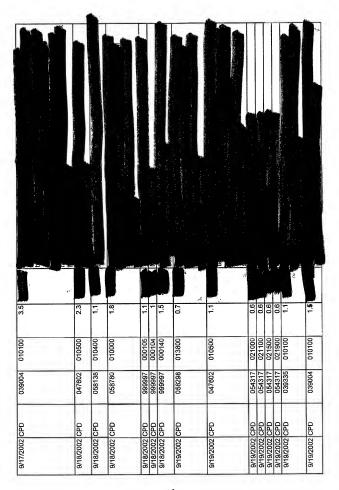
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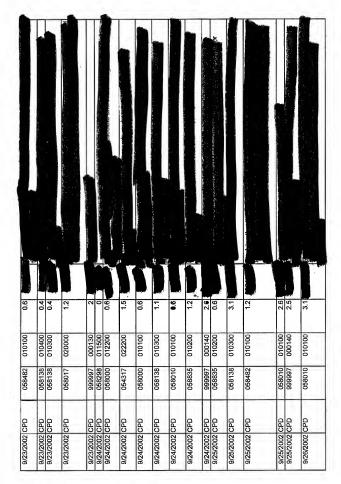




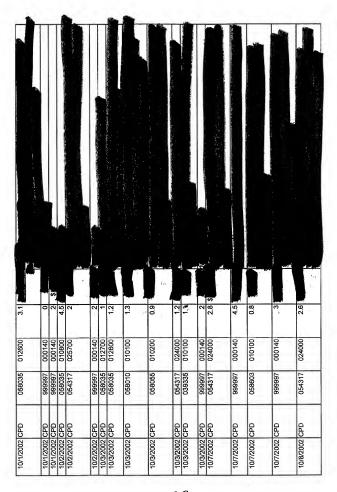
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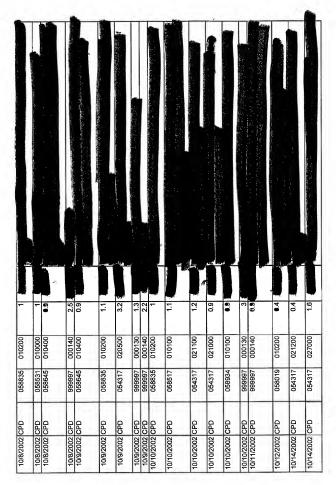


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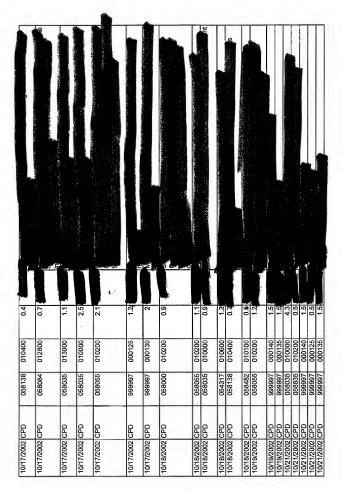


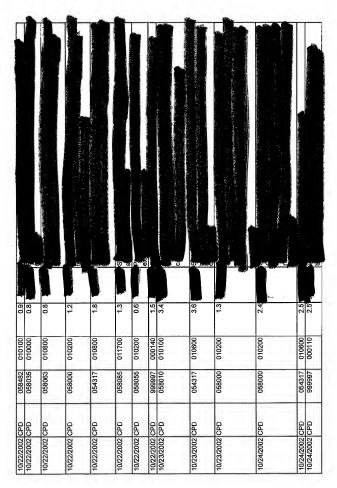
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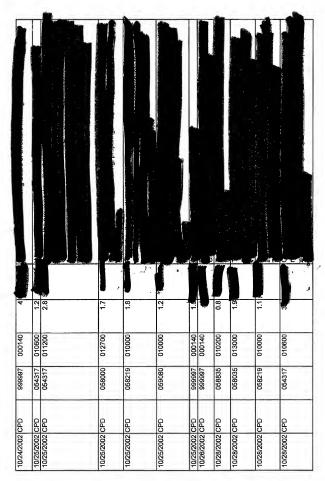




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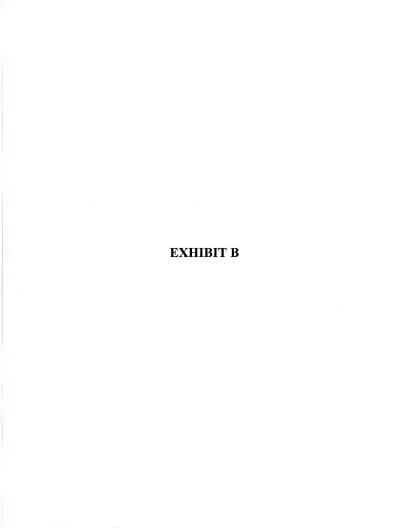






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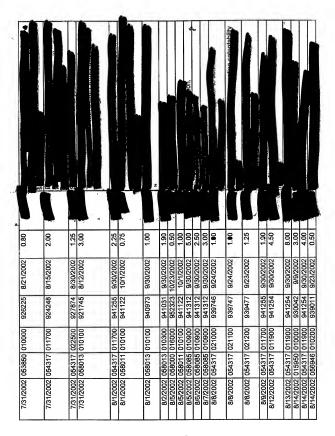
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5.00	2.20	1.00	0.50	1.00	0.90	06.0	0.50	1,10	1.00	2.25	0.35	3.00	3.50	0.75	0.50	6.50	
8/21/2002	8/21/2002	8/12/2002	8/21/2002	8/28/2002	8/30/2002	8/30/2002	8/30/2002	8/30/2002	8/29/2002	8/21/2002	8/30/2002	8/21/2002	8/21/2002	8/21/2002	8/21/2002	8/15/2002	-
926068	926065	921784	926068	927883	927779	927857	927779	927857	927927	926068	927874	926225	926068	926225	926225	924248	
010400	010000	010100	010400	010500	021600	022100	021600	022100	016000	010400	022500	010000	010400	010000	010000	011700	-
053436	053506	058011	053436	054317	054317	054317	054317	054317	058000 016000	053436	054317	053850	053436	053850 010000	053850	054317	-
7/12/2002 053436 010400	7/12/2002 053506 010000	7/15/2002 058011 010100	7/16/2002 053436 010400	7/16/2002 054317 010500	7/18/2002 054317 021600	7/18/2002 054317 022100	7/19/2002 054317 021600	7/19/2002 054317 022100	7/19/2002	7/24/2002 053436 010400	7/24/2002 054317 022500	7/25/2002 053850 010000	7/26/2002 053436 010400	7/26/2002	7/29/2002 053850 010000	7/29/2002 054317 011700	-



8/15/2002 054317 011900 941254 9130/2002 1.25 1.15/2002 024984 9130/2002 0.25/2018 0.13300 934984 913/2002 0.25/2018 0.13300 934984 913/2002 0.25/2018 0.13300 934984 913/2002 0.25/2018 0.13300 9341284 9130/2002 0.20 0.20/2018 0.125/2018 0.13300 9341284 9130/2002 0.20 0.20/2018																					
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		Ш		9/13/2002 -		L		_		Ш		_						Ш			9/23/2002
217	9/30/2002	9/13/2002	9/30/2002		9/30/2002	9/23/2002	9/9/2002	9/30/2002	9/30/2002	9/23/2002	9/30/2002	3/30/2002	9/23/2002	9/30/2002	9/30/2002	5/12/2003	9/23/2002	9/30/2002	9/24/2002	9/23/2002	
9541 9541 9541 9542 9543 9543 9563	941254 9/30/2002	934984 9/13/2002	941254 9/30/2002	934984	941254 9/30/2002	939011 9/23/2002	930042 9/9/2002	941255 9/30/2002	941254 9/30/2002	939011 9/23/2002	941312 9/30/2002	941255 9/30/2002	939011 9/23/2002	941254 9/30/2002	941279 9/30/2002	1041187 5/12/2003	939011 9/23/2002	941037 9/30/2002	939748 9/24/2002	939478 9/23/2002	9/23/2002

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10.00	0:20	10.00	6.00	-	0.50	1.00	1.00	1.50	0.50	0.50	0.50	0.50	4.25	1.75	1.00	1	09:0	0.75	00.9	6.10	5.10	9.00	9.20	9.50	9.50	6.10	10.50
9/23/2002	9/30/2002	9/23/2002	9/23/2002	9/23/2002	951695 10/21/2002	951690 10/21/2002	951732 10/21/2002	950166 10/31/2002	10/23/2002	10/23/2002	10/23/2002	10/24/2002	10/21/2002	10/21/2002	10/21/2002	10/31/2002	10/23/2002	10/21/2002	950166 10/31/2002	950166 10/31/2002	950166 10/31/2002	10/31/2002	950166 10/31/2002	10/31/2002	10/31/2002	10/31/2002	950166 10/31/2002
939011	941300	939011	939011	939011	951695	951690	951732	920166		952449	952456	952446	951732	951732	951744	950166	952455	951744	950166	950166	950166	950166	950166	950166	950166	950166	950166
010200	022800	010200	010200	010200	011900	016800	022800	010200	021000	021100	021600	021900	022800	022800	023100	010200	021000	023100	010200	010200	010200	010200	010200	010200	010200	010200	010200
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8/27/2002 056946 010200	8/28/2002 054317 022800	8/28/2002 056946 010200	8/29/2002 056946 010200	8/30/2002 056946 010200	9/3/2002 054317 011900	9/3/2002 054317 016800	9/3/2002 054317 022800	9/3/2002 056946 010200	9/4/2002 054317 021000	9/4/2002 054317 021100	9/4/2002 054317 021600	9/4/2002 054317 021900	9/4/2002 054317 022800	9/5/2002 054317 022800	9/5/2002 054317 023100	9/5/2002 056946 010200	9/6/2002 054317 021000	9/6/2002 054317 023100	9/6/2002 056946 010200	9/7/2002 056946 010200	9/8/2002	9/9/2002	9/10/2002 056946 010200	9/11/2002 056946 010200	9/12/2002 056946 010200	9/13/2002 056946 010200	9/16/2002 056946 010200

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2.50	0.50	9.80	9.50	6.50	2.50	2.25	1.90	0.50	1.50	1.50	2.75	1.75	4.80	0.25	0.25	2.00	1.00	1.00	0.50	1.00	0.50	0.50	0.50	1.00	0.25
951744 10/21/2002	950166 10/31/2002	950166 10/31/2002	950166 10/31/2002	950166 10/31/2002	951744 10/21/2002	952455 10/23/2002	952449 10/23/2002	950166 10/31/2002	952455 10/23/2002	952449 10/23/2002	952448 10/23/2002	951744 10/21/2002	966856 11/22/2002	960866 11/11/2002	966485 11/21/2002	11/11/2002	966858 11/22/2002	966844 11/22/2002	966842 11/22/2002	966841 11/22/2002	958379 11/7/2002	961085 11/11/2002	11/8/2002	11/7/2002	966867 11/22/2002
951744	950166	920166	950166	950166	951744	952455	952449	950166	952455	952449	952448	951744	966856	998096	966485	960862	966858	966844	966842	966841	958379	961085	959538	958379	966867
023100	010200	010200	010200	010200	023100	021000	021100	010200	021000	021100	021200	023100	021500	022700	016000	023100	021300	022200	022400	022600	010100	011700	010900	010100	011700
054317	056946	056946	056946	056946	054317	054317	054317	056946	054317	054317	054317	054317	054317	054317	028000	054317	054317	054317	054317	054317	060210	054317	058085	060210	058085
9/17/2002 054317 023100	9/17/2002 056946 010200	9/18/2002 056946 010200	9/19/2002 056946 010200	9/20/2002 056946 010200	9/23/2002 054317 023100	9/24/2002 054317 021000	9/24/2002 054317 021100	9/24/2002 056946 010200	9/25/2002 054317 021000	9/25/2002 054317 021100	9/30/2002 054317 021200	9/30/2002 054317 023100	10/1/2002 054317 021500	10/1/2002 054317 022700	10/1/2002 058000 016000	10/2/2002 054317 023100	10/3/2002 054317 021300	10/3/2002 054317 022200	10/3/2002 054317 022400	10/3/2002 054317 022600	10/3/2002 060210 010100	10/4/2002 054317 011700	10/4/2002 058085 010900	10/4/2002 060210 010100	10/7/2002 058085 011700

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8.90	06.0	6.50	1.50	0.90	2.75	1.00	1.25	1.00	1.80	1.50		1.40	2.25	2.50	3.80	0.25	3.80
		958379 11/7/2002	966843 11/22/2002	966839 11/22/2002	11/7/2002	11/22/2002	967560 11/22/2002	6/28/2004	966863 11/22/2002		6/10/2003	966843 11/22/2002	11/7/2002	966843 11/22/2002	958379 11/7/2002	979984 12/20/2002	966843 11/22/2002
958379	979959	958379	966843	966839	958379	967560	967560				1055197		958379	966843	958379		
10/7/2002 060210 010100	10/8/2002 054317 027000	10/8/2002 060210 010100	10/9/2002 054317 022500	10/9/2002 054317 027000	10/9/2002 060210 010100	022300	10/10/2002 054317 022300	10/10/2002 999997 000130	10/11/2002 054317 021100	054317 021200	10/14/2002 054317 010000	10/14/2002 054317 022500	10/14/2002 060210 010100	10/15/2002 054317 022500	10/15/2002 060210 010100	10/16/2002 054317 021900	10/16/2002 054317 022500
060210	054317	060210	054317	054317	060210	054317	054317	999997	05431	05431	05431	05431	060210	05431	06021	05431	05431
2002	3/2002	8/2002	/9/2002	//9/2002	0/9/2002	10/10/2002	/10/2002	//10/2002	/11/2002	10/11/2002	/14/2002	/14/2002	/14/2002	/15/2002	/15/2002	116/2002	/16/2002

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3.25	1.00	2.00	2.50		1.50	0.50	1.00	0.50	0.75	0.50	09.0	 0.80	0.80	0.50	1.75	0.50
966856 11/22/2002	966843 11/22/2002	7/27/2004	960889 11/11/2002		966856 11/22/2002	966843 11/22/2002	966867 11/22/2002	967761 11/25/2002	961085 11/11/2002	960904 11/11/2002	966856 11/22/2002	11/22/2002	966851 11/22/2002	966845 11/22/2002	966843 11/22/2002	966839 11/22/2002
966856	966843	1254269	688096		966856	966843	298996	967761	961085	960904	966856	967564	966851	966845	966843	966839
021500	022500		020400		021500	022500	011700	011100	011700	017600	021500	021700	021800	022000	022500	027000
054317	054317	999997 000140	054317		054317	054317	058085	058091	054317	054317	054317	054317	054317	054317	054317	054317
10/17/2002 054317 021500	10/17/2002 054317 022500	10/17/2002	10/22/2002 054317 020400		10/22/2002 054317 021500	10/22/2002 054317 022500	10/22/2002 058085 011700	10/22/2002 058091 011100	10/23/2002 054317 011700	10/23/2002 054317 017600	10/23/2002 054317 021500	 10/23/2002 054317 021700	10/23/2002 054317 021800	10/23/2002 054317 022000	10/23/2002 054317 022500	10/23/2002 054317 027000

								7			Tr.	E. J.			
0.90	1.25	0.50	1.60	0.90	1.30	0.75	0.50	0.50	1.75	0.25	0.50	1.25	1.75	0.50	0.75
966867 11/22/2002 0	11/11/2002 1	960904 11/11/2002 0	967564 11/22/2002 1	966851 11/22/2002 0	966843 11/22/2002 1	11/5/2002 0	966867 11/22/2002 0	966851 11/22/2002 0	966843 11/22/2002 1	979972 12/20/2002 0	11/5/2002 0		966867 11/22/2002 1	7/27/2004 0	
298996	961085	960904	967564	966851	966843	955990	298996	966851	966843	979972	955982	955990	966867	1254269	966858
011700	011700	017600	021700	021800	022500	016300	011700	021800	022500	022500	014000	016300	011700	000140	021300
058085	054317	054317	054317	054317	054317	058013	058085	054317	054317	054317	058013	058013	058085	299997	054317
10/23/2002 058085 011700	10/24/2002 054317 011700	10/24/2002 054317 017600	10/24/2002 054317 021700	10/24/2002 054317 021800	10/24/2002 054317 022500	10/24/2002 058013 016300	10/24/2002 058085 011700	10/25/2002 054317 021800	10/25/2002 054317 022500	10/25/2002 054317 022500	10/25/2002 058013 014000	10/25/2002 058013 016300	10/25/2002 058085 011700	10/25/2002 999997 000140	10/28/2002 054317 021300

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0.75	0.50	0.75	5.50	09:0	0.40	09:0	3.25	0.40	1.25	0.20	5.25		1.75	0.80	0.80	4.50	0.60	445.40
966844 11/22/2002	967560 11/22/2002	966843 11/22/2002	11/5/2002	966858 11/22/2002	966851 11/22/2002	966844 11/22/2002	967560 11/22/2002	966843 11/22/2002	966839 11/22/2002	966867 11/22/2002	967560 11/22/2002		966839 11/22/2002	967560 11/22/2002	966839 11/22/2002	11/5/2002	966867 11/22/2002	
966844	967560	966843	955989	966858	966851	966844	967560	966843	966839	966867	967560		966839	967560	966839	955989	966867	
022200	022300	022500	016100	021300	021800	022200	022300	022500	027000	011700	022300		027000	022300	027000	016100	011700	me
054317	054317	054317	058013	054317	054317	054317	054317	054317	054317	058085	054317		054317	054317	054317	058013	058085	lue of T
10/28/2002 054317 022200	10/28/2002 054317 022300	10/28/2002 054317 022500	10/28/2002 058013 016100	 10/29/2002 054317 021300	10/29/2002 054317 021800	10/29/2002 054317 022200	10/29/2002 054317 022300	10/29/2002 054317 022500	10/29/2002 054317 027000	10/29/2002 058085 011700	10/30/2002 054317 022300		10/30/2002 054317 027000	10/31/2002 054317 022300	10/31/2002 054317 027000	10/31/2002 058013 016100	10/31/2002 058085 011700	Total Time/Value of Time